

MINUTES
WEST VALLEY LAND USE ADVISORY COMMITTEE
May 21, 2020

Chairman Steve Alejandro called the meeting to order at 5:30pm. Committee members present were: Steve Alejandro, Paul McKenzie, Barbara Long, Monty Long (by phone), Bruce Colburn. A quorum of the advisory committee was present. Meeting was held in the Flathead County Fairground Expo building in order to provide adequate social distancing and comply with Covid-19 health directives. County Planning Director Mark Mussman was in attendance, as were representatives of the applicant. Approximately 70 members of the public attended. Copies of sign in sheets are attached to these minutes.

Chairman Alejandro gave an overview of WVLUAC purpose and role. He outlined how the meeting would proceed for the evening. Committee members were given the opportunity to introduce themselves.

The minutes from the February 25, 2020 were reviewed and approved. Motion by B Colburn,, second by B. Long, unanimous vote in favor.

OLD BUSINESS

Chairman Alejandro verified with the committee members that they had received the examples of other neighborhood plans in the county for their review. The committee acknowledged receipt. The Chairman requested committee members review the plans in the context of discussion of potential update of the West Valley Neighborhood Plan.

NEW BUSINESS:

The board reviewed one project, a request by Rob Koelzer of Schellinger Construction Co. on behalf of Section 16 Limited Family Partnership to modify a condition of approval from previously approved Conditional Use Permits (FCU-05-07, FCU-08-07) to allow concrete and asphalt batch plants on an existing gravel extraction operation. The property is located at 3427 Farm to Market Road, further described as the 160 acres located in the NW¹/₄ Section 16 T29N R22W P.M.M. Flathead County, Montana. Subject property lies entirely within the West Valley Zoning District and zoned West Valley.

The applicant was asked to present the project. He stated the request was to remove the condition from the existing CUP's that prohibited asphalt and concrete batch plants within the gravel extraction operation. He stated the applicant intended to abide by all other conditions of the existing permits and was only looking to modify the one condition. He pointed out that in 2010 the definition of Gravel Extraction in the county zoning regulations was changed to include concrete and asphalt production. He acknowledged the 2010 Consent Decree and pointed out section "C" which they have interpreted as allowing them to make future applications for modifications to the existing CUP.

Mr. Koelzer stated that their company strives to be good neighbors and responsive to community concerns and intend to continue doing so under the new request as well. He stated gravel is a finite resource, is not located everywhere, and is in high demand. This request is in response to market demand for not only gravel, but concrete and asphalt. He stated these services are critical to the community. He reiterated that the plants being proposed are portable in nature. The current intent would be to move the plants into and out of the pit as needed to meet project need and market demand. Asphalt plant would be set up close to the highwall – material source. Concrete plant would be set up more central to the pit area, however, they have no immediate plans to bring the concrete plant on site. Both plants would be installed on the pit floor.

The asphalt plant would require storage of asphalt oil and diesel on site. Water study was done for previous applications, pit floor is 23' above high-water mark for ground water. DEQ requires spill management plan that has reporting, containment and training requirements. Double walled tanks and/or containment liners are used. Mr. Koelzer acknowledged there was some odor associated with asphalt production that could not be eliminated, however there is a DEQ air quality permit in place for the plant and it is equipped with bag houses for particulate control.

The committee had an opportunity to ask questions of the applicant.

B. Colburn asked a series of questions: (applicant response in *italic*)

- regarding alternative locations across the valley: *Applicant responded, yes there are other potential locations, but this is the one being requested.*
- Would the Asphalt plant be temporary or permanent? : *Anticipated to be temporary*
- What is expected life of the pit? *Reclamation date is 2040*
- Are there specific projects in mind for this pit: *Yes, but no details available.*
- Why the change from the 2010 agreement? ; *New conditions, new demands.*
- Are there any limitations expected on volumes of truck traffic? : *No.*
- Can other sites fulfill the need? : *Yes, but may not be economically viable.*
- What is the capacity of the proposed Asphalt plant?: *Maximum capacity of the current plant is roughly 400 tons per hour production. However, it does not run at maximum capacity, but based upon need. The plant does not run continuously, but in batches to match the projected use rate.*
- Is a delay in approval of this CUP, say 18 months, acceptable? : *No.*

Chairman Alejandro asked a series of questions: (applicant response in *italic*)

- Reiterated questions regarding size of plant and why the change to the agreement, similar answers were given.
- How much asphalt oil would be stored on site and how many deliveries a day would be expected? : *Storage tanks are approximately 30,000gal capacity with 3-4 deliveries a day of asphalt oil while production is ongoing.*
- Question regarding volume of production and traffic associated with? : *Peak production on the asphalt plant is 600-800yds/day. Concrete is 200-400 yds/day. Production is based on demand, which is highly variable. The asphalt plant usually only runs 10-15,000 tons in an entire year, and usually only operates for 30 days total in a year, this may be in multiple locations. The concrete plant runs 20-30,000yds/yr total. It is really difficult to project what operations in this pit would look like as it is dependent on demand.*
- Discussion of potential traffic volume, Chairman A. made some estimates, the applicant did not verify or dispute the estimates made. Applicant did not make specific projections on traffic due to uncertainty of production levels.

P. McKenzie asked: (applicant response in *italic*)

- Would all three production aspects, concrete, asphalt and crusher be on site and operational at the same time or would they be separate? *In general, each activity would operate separately, generally the crusher is moved in and a volume crushed to meet projected demand for a period of time. Currently the crusher operated for approximately 3 months in the last two years. Similarly, the asphalt and concrete plants would be operated in conjunction with projects and anticipated demand. It is unlikely, but possible that two or more production operations could be active concurrently.*

Director Mussman presented the County Staff Report. He also provided a series of additional public comment that came after the committee packet was provided. The current report and staff recommendation is for approval of the CUP with include adoption two additional conditions. One being adoption of all existing conditions of FCU-05-07 and as modified by the Stipulated Consent Decree and Final Judgement. Second being requirement for asphalt and concrete plants to comply with all requirement and regulations required by DEQ. Mr. Mussman advised the committee that it was in their purview to consider additional conditions as they see fit. An example could be a condition requiring batch plants be placed on the pit floor. The County has interpreted the terms of the Stipulated Agreement and Consent Decree similar to the applicant in that it allows for the current request for modification of existing CUP.

Mr. Mussman gave a summary of events leading up to this application, including previous CUP issuances, legal challenges and court decisions – judgements.

The committee asked a series of questions, summary as follows: (Mussman response in *italic*)

- How were the water quality issues addressed? *Staff determined that the original water quality study was adequate and that DEQ requirements adequately addressed the additional uses.*
- How were emergency services addressed? Does West Valley Fire have capacity to respond? Equipment, personnel, training? What are environmental impacts of an asphalt oil fire? *Applicant did not provide any information on this. There is no documentation that West Valley Fire has been asked these questions.*
- The existing water quality report indicates there is no physical barrier between the pit floor and the shallow aquifer, how is potential contamination addressed? *Valid question that has not been answered.*
- What about air quality, fumes, noise? *Do not have sufficient data in the application to analyze specific impacts.*
- *Mr. Mussman clarified that while a portion of the LHC pit is within the West Valley zoning area, the actual asphalt and concrete plants are not, but are in an agricultural zone.*
- Question if current and future development of adjoining private parcels has been considered in the analysis? *It was not. Cannot project the future.*
- Question on the traffic analysis and the estimate of 75-100 trip per day average. *This is an annualized average and does not account for short term or seasonal fluctuations, which could be significantly different. The application did not provide enough data for more specific analysis.*
- Question on who monitors – ensures CUP compliance? *Burden is on the permit holder for compliance. County does do spot checks, no set compliance verification process. County responds to complaint and reports of non-compliance on a case by case basis.*

Chairman Alejandro opened the meeting for public comment: No attempt will be made to portray individual public comment in the minutes. The video record will provide specific verbatim comment record. Sixteen members of the public provided oral comments. Fifteen were against the project, one was appreciative of the committee work and process and supportive (representative of landowner).

The following issues / comments were raised in public comment, in no particular order:

- This is not an appropriate use in a residential area. WV plan discourages industrial uses not associated with agriculture and timber. This is clearly an industrial use and should be denied.
- The concrete plant could operate 12 months per year, where the current pit only operates 4-6 months.

- Traffic analysis is insufficient, numbers used are too low. Just using traffic volume is insufficient, other characteristics of traffic need to be considered, speed, acceleration, deceleration, configuration of loads, turning etc....
- The volumes provided and timeline for pit development and reclamation don't add up.
- What about property value impacts? Decrease in residential value with corresponding increase in applicant value, no exchange, not equitable.
- Berms are not maintained, vegetation is not adequate.
- Inadequate public notice, 150' buffer is not adequate for the community impact.
- There is a history of water contamination, specifically nitrite contamination that can not be ignored. How will this modification affect that?
- The progressive development and reclamation has not been done as planned. Originally no more than 40 ac open at a time.
- Security fence and berms are not adequate or complete.
- How are cumulative effects addressed in analysis of impacts?
- Traffic issue and safety
- Fire department capacity is inadequate.
- Noise exceeds 85 decibels, causes hearing loss.
- **MULTIPLE REQUESTS FOR IN PERSON BOARD OF ADJUSTMENT HEARING RATHER THAN VIRTUAL – PHONE HEARING SCHEDULED.**
- Industrial character of request is not consistent with WV zone
- Would provide a precedent for future industrial development, open the door.
- There is a 1-3 mile “fume zone” associated with asphalt plant. Odor has negative property value impacts, estimated at 25-30% drop in property value, which could equate to \$10million in losses within a mile of the pit.
- Operator is not being a good neighbor by requesting this type of use.
- Traffic accidents will increase.
- Cumulative effects considered with all of the other regional pit activity?
- Hours of operation restrictions not being followed.
- Potential for water contamination to adjacent residential areas, community wells.
- Disagreement with interpretation of Court Decree. Bad faith, breaking an agreement made with the community.
- Loss of quality of life not considered. Loss of agricultural – residential qualities.
- Health issues associated with air emissions and pollution. Specific concerns with asphalt air pollution.
- Loss of agriculture land
- Need details and scientific based info and analysis to fully consider the impacts of the request.
- Impact on those with compromised health conditions, respiratory distress.
- You can not mitigate traffic, noise and air pollution.
- Application and staff report were inadequate to make an informed decision.
- Gravel extraction vs. extractive industries was used in the WV plan for a reason, differentiate between agriculture associated gravel use and industrial uses, such as batch plants. Industrial uses not appropriate in the zone.
- 2010 Agreement specifically eliminated these uses, breaking an agreement with the community.
- What is the mitigation plan for spills? How will you protect the watershed?
- Now that Clean Water Act applies to surface water, how is this compliant?
- Not a minor change, significant issue that must be addressed.
- What are the volumes of asphalt and concrete associated with South Side bypass? This will give a good estimate of what is planned for the pit as this is obviously what this is all about.
- Temporary plants will become permanent.
- Asking for a blank check, no assurances that what they say will be done will be done.

- Mobile plant does not mean small plant.
- Concrete dust and lung problems.
- Environmental problems associated with Asphalt plant must be disclosed and studied: Fugitive emissions from trucks transporting asphalt off site impacts. Hydrocarbon effects on health and environment are significant.
- Damage to Farm to Market already exists. Deep ruts in pavement.
- Hours of operation and noise are problems with current operations.
- Current ground water study is inadequate. Does not consider the effects of the open pit being exposed to the atmosphere. Rainwater percolation creates sulfuric acid resulting in acidification of the aquifer.
- What happened to the condition that prohibits importing materials for processing? Both asphalt and concrete will require importation of materials for processing.
- Truck traffic on Church drive already too high. Safety with 90-degree corners.
- Given wind patterns and potential for inversions, how are air quality impacts studied under these conditions unique to the valley?
- Industrial uses are not appropriate in WV zone.
- What are the effects on birds? Close proximity to the bird sanctuary.
- Church on Church Drive just built a youth center. How will young drivers interact safely with heavy truck traffic, potential for tragedy. The Church was there first.

Public comment concluded. The applicant was given the opportunity to respond. No response was given. Mr. Mussman addressed the BOA hearing issue. Originally no June 2nd meeting was scheduled due to conflict with county election department activities that day. In order to ensure timely due process for applicant, June 2nd meeting was scheduled. Public notice of the meeting has been made. 15-day requirement for change to schedule. Usual meeting place nor the fairground building are available, so conference call was only option. He will check with County legal counsel on any options, but for now the meeting will stand.

Board deliberation on the issue ensued. B. Colburn identified four elements on which he feels the staff report and analysis are inadequate: Process, Socio-economic impacts, legal issues, examination of public – private benefit. B. Long agreed with Colburn concerns.

A motion was made by B. Colburn, second by B. Long to call the question to approve or deny the CUP modification request. Chairman Alejandro called the question. Roll call vote indicated unanimous consent by those committee members present for denial of the request.

A discussion ensued with planning staff regarding next steps. It was determined that modifying some of the staff report findings of fact to support the decision for denial was appropriate

- **Paul M made the motion, second by Steve A to modify finding # 3 as follows: *Finding #3 - There does not appear to be environmental constraints associated with any Special Flood Hazard Area, however, potential for groundwater contamination is a concern. The existing water quality report must be revised to consider the potential impacts of the modified uses adding an asphalt and concrete batch plant.* Motion passed on roll call vote unopposed.**
- **Paul M made the motion, second by Bruce C. to modify finding # 7 as follows: *Finding #7 – The current fencing/screening and landscaping conditions on the existing CUP appears appropriate because there is fencing around the perimeter of the property and there is a vegetated earthen berm which provides some screening of the current and future mining operations from Farm to Market Road and adjacent properties. However, with the***

addition of an asphalt and concrete batch plant, additional screening may be necessary.
Motion passed on roll call vote unopposed.

- **Paul M made the motion, second by Bruce C. to modify finding # 9 as follows:** *Finding #9 – Sewer and water facilities appear to be appropriate because portable toilets are utilized as necessary, there is no other sewage treatment facility on the site; there is an irrigation well on the property that services both the mining operation and agricultural use. The stormwater management plan appears to be inadequate to protect ground water from potential contamination from materials stored on site associated with operation of an asphalt and/or concrete batch plant.* Motion passed on roll call vote unopposed.
- **Paul M made the motion, second by Steve A to modify finding # 10 as follows:** *Finding #10 – The proposed condition modification may adversely affect fire and police protection. It is unknown if West Valley Fire Department has adequate capacity, equipment and training to respond to potential emergencies associated with the requested CUP modification and associated operation of asphalt and concrete batch plants. The Flathead County Sheriff's Department will respond to any other emergency situations.* Motion passed on roll call vote unopposed.
- **Paul M made the motion, second by Steve A to modify finding # 12 as follows:** *Finding#12 - Additional traffic generated by the proposed batch plant uses is expected to be significant. The limited information provided indicates traffic on Farm to Market could increase by as much as 30% periodically.* Motion passed on roll call vote unopposed.
- **Steve A. made the motion, second by Bruce C. to modify finding #13 as follows:** *Finding #13 – The noise and vibrations generated by the proposed batch plants is anticipated to be above and additional to the noise generated by the approved gravel operation. The earthen berm and hours of operation may need to be modified to mitigate noise and vibration impacts to nearby properties.* Motion passed on roll call vote unopposed.
- **Bruce C. made the motion, second by Steve A to modify finding #14 as follows:** *Finding #14 – The proposed uses are anticipated to have minimal impact on the neighborhood as a result of dust, glare and heat. Smoke, fumes, gas, or odors that contribute to air pollution caused by operation of the batch plants is a concern. The dust generated from the existing gravel operation is controlled by active watering of the site and the 200 foot paved approach off of Farm to Market Road.* Motion passed on roll call vote unopposed.

The board discussed next steps. Secretary McKenzie will draft meeting minutes and a letter to BOA with the recommendation for denial of the CUP modification along with the modified findings of fact as rational for denial. Minutes and recommendations will be forwarded to Planning Office and Board of Adjustment as soon as possible.

Bruce C made a motion to adjourn, second by Paul M. Passed unopposed at 10:15pm

Respectfully Submitted,



Paul R. McKenzie